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**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|----------------------|---|----------------------|
| DAVID M. BOLAN, |) | |
| |) | |
| Appellant-Defendant, |) | |
| |) | |
| vs. |) | No. 18A05-0802-CR-57 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Plaintiff. |) | |

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Wayne J. Lennington, Judge
Cause No. 18C05-0506-FA-9

July 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

David M. Bolan appeals the sentence imposed following his plea of guilty to three counts of child molesting, as class B felonies.¹

We affirm.

ISSUE

Whether the trial court erred in sentencing Bolan.

FACTS

On June 3, 2005, Bolan, the father of then five-year-old twins, D.B., a boy, and D.A.B, a girl, allowed their then five-year-old female cousin, C.T., to spend the night at his residence. Later that night, Bolan viewed a pornographic video with the children. While watching the video, Bolan had the children remove their clothes, and he proceeded to lick their genitalia. Bolan then had D.A.B and C.T. perform oral sex on him before he inserted his penis into their vaginas. The next day, after C.T. told her mother that she had viewed a pornographic movie at Bolan's house and that Bolan had inappropriately touched her, C.T.'s mother contacted the police.

On June 8, 2005, the State charged Bolan with numerous felonies: count I, child molesting, as a class A felony; count II, vicarious sexual gratification, as a class C felony; count III, dissemination of matter harmful to minor, as a class D felony; count IV, child molesting as a class A felony; and count V, child molesting, as a class A felony.

On October 30, 2007, the parties tendered a plea agreement to the trial court. Pursuant to the plea agreement, the State amended counts I, IV, and V, child molesting as

¹ Ind. Code § 35-42-4-3.

class A felonies, and Bolan agreed to plead guilty to the three amended counts of child molesting as class B felonies, with the State agreeing to dismiss the remaining counts. The plea agreement provided that the sentences were to be served concurrently, and that the executed portion of the sentences was not to exceed sixteen years. All further sentencing decisions were left within the trial court's discretion.

After the trial court advised Bolan of his rights and established a factual basis for his plea, the trial court accepted the plea agreement; ordered a pre-sentence investigation report ("PSI"); and set the sentencing hearing for December 17, 2007.

According to the PSI, Bolan had been charged with at least seventeen misdemeanors and fourteen felonies, resulting in ten misdemeanor and three felony convictions.

On December 17, 2007, after hearing testimony from Bolan and his family members, the trial court found that Bolan's criminal history was so excessive that it "overrides any and all mitigating circumstances." (Tr. 48). The trial court sentenced Bolan to concurrent sentences of sixteen years in the Indiana Department of Correction for each count of child molesting. The trial court ordered Bolan tested for mental illness and found him to be a sexually violent predator.

DECISION

Bolan first contends that the trial court erred by not weighing the mitigating and aggravating circumstances properly. Second, Bolan contends that the trial court abused its discretion in sentencing him by failing to enter a sentencing statement.

Sentencing lies within the discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Thus, we review trial court sentencing decisions only for abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

1. Mitigating Circumstances

Bolan contends that the trial court abused its discretion by failing to weigh the mitigating and aggravating circumstances properly.

Indiana's amended sentencing scheme, changing sentencing guidelines to advisory as opposed to presumptive, was enacted on April 25, 2005.² Thus, it applies to Bolan, whose crimes were committed on June 3, 2005. *Anglemyer*, 868 N.E.2d at 491-92. As such, we review Bolan's sentence under the advisory sentencing scheme in place when he committed his crimes. *Id.*

Under Indiana's advisory sentencing scheme, the trial court no longer has an obligation to weigh aggravating and mitigating factors against each other when imposing a sentence; therefore, a trial court can not be said to have abused its discretion in failing to properly weigh such factors. *Anglemyer*, 868 N.E.2d at 491. Accordingly, Bolan's argument that the trial court abused its discretion by failing to weigh the mitigating and aggravating circumstances properly is not reviewable on appeal.

2. Sentencing Statement

² I.C. § 35-38-1-7.1(d); I.C. § 35-50-2-1.3.

Bolan next contends that the trial court abused its discretion by failing to enter a sentencing statement. We disagree.

When a trial court imposes a sentence in a felony case, it must provide a reasonably detailed sentencing statement. *Anglemeyer*, 868 N.E.2d at 490. A trial court abuses its discretion only when (1) the trial court fails to provide any sentencing statement; (2) the sentencing statement is not supported by the record; (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration by the defendant; or (4) the trial court's reasons are improper as a matter of law. *Id.* at 490-91. If the trial court finds aggravating or mitigating circumstances, then the trial court is obligated to identify all significant mitigating and aggravating circumstances and explain why each is aggravating or mitigating. *Id.* at 493.

When assessing the adequacy of a trial court's sentencing statement, we consider all of the trial court's comments during the proceedings. *See Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002) (“[W]e are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings.”); *see also Strong v. State*, 538 N.E.2d 924, 929 (Ind. 1989) (“In addition to the discussion set forth in the separate sentencing order, this Court has reviewed the trial court’s thoughtful comments at the conclusion of the sentencing hearing.”). We may discern the trial court’s intentions from either the written sentencing statement or in combination with the court’s comments during the sentencing hearing.

When sentencing Bolan, the trial court made the following statement:

The really sad thing in all this ... is here is a man that’s supposedly is [sic] intelligent. He came from a family who has [sic] the substance, intelligent

people who should've seen some deeper problem, who should've got him some treatment, some care, somewhere had him committed, put him in an institution where he could've been cared for when he still had a chance. His chance is gone. His time is gone. And if he would've robbed a store, I could said [sic] fine, we'll give them back their money. If he had stolen something, I could say we can make restitution. But what he's taken, there is no restitution. I see these children, they're going through counseling. There [sic] lives are screwed up. Maybe they would have been anyhow, but they didn't have the chance because somebody abused them. Somebody molested them. I can't understand it. It is absolutely beyond my comprehension to say that some man who is mentally competent to do anything, he ran a business, he's done jobs, he's done other things, his parents say how intelligent he was. His brother said the things he can do and yet he molested children? Jake, there is no greater crime in this world than molesting a child. A child who is defenseless, whose [sic] recognized by law as being defenseless. If we are to protect anyone, it's got to be children. You know? These other charges, Forgery, okay, so he forged something. Crime against property, I don't get near [sic] as disturbed about as I do children. And he wants to say that he's become a Christian. I hope he has. I consider myself a Christian. And I make mistakes and everybody does, and I hope that he has been forgiven. I hope that new thing that has come to him will make him something because in prison he's going to have a chance to attend services and there are people there. Maybe he'll find some help. But, I demand, as you should, as everyone should, when somebody injures, mistreats, molests one of these children, that it be paid for in blood and tears. And I'm with you. I think it ought to be a capital offense. But anyhow, his criminal history is just, it's horrible. Look at the crimes in this thing. I'm not going to go through them. You've read them in the Pre-Sentence. He's just moved up the ladder. You can see his history, just like you said. You can tell every place he lived by his criminal offenses, but they became bigger and bigger and bigger and bigger, till they culminated ultimately into molesting a child. ...[H]is criminal history is the most damning thing in this whole thing and it overrides any and all mitigating circumstances. I appreciate that he came in here and plead guilty because I'm like him. I just tried a child molesting case about a month ago. It's a horrible case. We put little eight girls [sic] on the stand to question, ask them what happened. It's horrible, but it's the way it has to be done under our law and I appreciate that we didn't have to do that here. But that didn't make this crime any less horrible than it was. And drugs, Jake, you can deny them all you want to, but your [sic] still doing it, and he's gone through all these years with it. An intelligent man. And I'm offended by it. I think it's a terrible thing that they weren't able to get him help back when all of this [sic] were smaller offenses that were smaller offenses that we could have dealt with. Because now we're looking at sixteen years. And

he's going to have to do the minimum. And, you know, I hope the best for you Mr. Bolan. ... And I hope that you really truly repent and understand how bad the punishment is for these crimes to the point that you will never do them again. ... And I would, if I were sure of that, I would be more lenient, but I'm not sure because I hear this everyday. Well, I think today you heard a guy here telling me for twenty minutes how he had found religion and he wasn't going to dope anymore. But every time I let him out, he does. So I pray that I am correct in what I am doing. And I sentence you to sixteen to [sic] the Indiana Department of Corrections [sic]. I am going to put on there that I ask that you be, receive [sic] testing for mental illness. That's the best I can do for you.

(Tr. 48-50).

During the sentencing hearing, the trial court made several comments from which we can glean its intent. The trial court commented on several mitigating circumstances and acknowledged that Bolan pleaded guilty; that he has a drug addiction; that his family is supportive; and that he may have mental health issues. The trial court also commented on several aggravators: Bolan's extensive criminal history; the impact resulting from the severity of the crime of child molestation; the victims were defenseless five-year-old children; he was in a position of trust with the victims; his chance for rehabilitation appears to be weak; and the progressive nature of his criminal behavior. We agree with the trial court that the evidence speaks volumes as to the nature of the offenses and to Bolan's character.

The trial court's comments sufficiently illuminated its reasons for imposing sentencing and is supported by the record. Accordingly, the trial court did not abuse its discretion when it sentenced Bolan.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.